

REMARKS

This amendment is filed in response to the Office Action of October 20, 2005. The issues raised and rejections presented in the Office Action have now been carefully addressed.

The Examiner has rejected claims 1, 2, 5-15, 16, 20-22 and 25-29 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 5-8, 11 and 15 of U.S. Patent No. 6,621,560. The Examiner takes the position that these claims are not patentably distinct from claims 3, 5-8, 11, and 15 of the '560 patent. Submitted herewith is a Terminal Disclaimer under which a patent issuing on the instant application will expire simultaneously with the '560 patent. It is submitted that the double patenting rejection is no longer proper.

Claims 1, 2, 5, 11, 12, 15, 16, 20, 25, 26 and 29 have been rejected under 35 USC 102(b) as anticipated by Gerard et al U.S. Patent No. 5,689,330. It is believed that this rejection is not proper. The '330 patent, as seen in Fig. 2, includes circuitry (A-to-D converter and microprocessor 38) that monitors the temperature of a thermister 40. The thermister 40 is "in temperature sensing proximity with the environment of inclinometer 24." The microprocessor 38 then sets a "digital potentiometer" 46 that provides an offset on line 48 that is summed with the output 28 of the level vial 24.

Claim 1, and dependent claims 2, 5, 11, 12, 15 are clearly not anticipated by the '330 patent. The claims all specify that the temperature sensor circuit detects the error "by detecting the temperature of the vial itself." As may be seen in Fig. 3 of the present application, this is accomplished by measuring the current produced by a test signal applied across the level vial electrodes. This measures the temperature "of the vial itself" as opposed to the temperature of a separate element close to the vial. Similarly, claim 16 specifies that the temperature sensor circuit is "connected to said first, second, and common leads of said first and second level vials."

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The sensor circuit of the '330 patent is not electrically connected to the level vial, let alone to the recited electrodes of the level vial. Finally, claim 20, and dependent claims 25, 26, and 29, all specify that all call for a transmitter that has a sensor circuit for detecting the resistance of the quantity of fluid in the level vial. '330 simply has no such circuitry.

Claim 6 has been rejected under 35 USC 103(a) as being unpatentable over the '330 patent in view of Ito U.S. Pat. No. 5,146,688. Claims 13, 14, 27 and 28 are rejected as being unpatentable over the '330 patent. Claim 6 depends from claim 5 and is patentable over the '330 patent for the same reasons as claim 5. The secondary Ito reference does nothing to cure the defect in the basic rejection, as pointed out above.

Claims 13 and 14 are rejected as being unpatentable over the '330 patent. Claim 13 depends from claim 12 and is patentable over the '330 patent for the same reasons as claim 12.

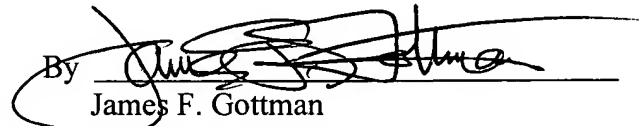
Claims 27 and 28 are rejected as being unpatentable over the '330 patent. Claims 27 and 28 depend from claim 26 which, in turn, is patentable over the '330 patent for the reasons set out, above.

In view of the above, it is submitted that all of the claims pending in the instant application are patentable. Early notice of favorable action is respectfully requested.

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If the Examiner has any questions or comments regarding the present application, please contact the undersigned at the telephone number indicated below.

Respectfully submitted,
DINSMORE & SHOHL LLP

By 
James F. Gottman
Registration No. 27,262

One Dayton Centre
One South Main Street, Suite 1300
Dayton, Ohio 45402-2023
Telephone: (937) 223-2050
Facsimile: (937) 223-0724

JFG/kec